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CONSISTENCY OF THE ARRANGEMENTS GRANTING EXTENSIONS OF THE TERM OF BUILDING USE RIGHTS FOR HOUSES TO PROVIDE LEGAL CERTAINTY

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Abstract: There is ambiguity in the regulation for granting HGB term extensions. Article 35 of the UUPA do not recognize the granting of an extension "all at once", whereas in Article 145 of Law Act No. 6 / 2023 provides provisions for granting extensions “all at once”. There are two problems focuses. First, how are the current regulations regarding granting term extensions? Second, what will be the future regulations regarding granting an extension of the term of building use rights for flats that will provide more legal certainty? The main purpose in this research is to analyses inconsistency about the regulation on HGB. Using normative legal research, with statute approach and conceptual approach. The result in this research, current regulations for granting HGB periods, it turns out that there is a lack of clarity in the regulations. Moreover, what is regulated in Article 145 Law Act No. 6 / 2023 is not in line with Article 33 paragraph (3) UUD NRI 1945. Therefore, future regulations must be developed with linear consistency with the regulatory direction of Article 33 paragraph (3) of the UUD NRI 1945, UUPA, and even the Constitutional Court jurisprudence to provide legal certainty.

Keywords: Legal Consistency; Extension of HGB Term; Flats; Legal Certainty.

I. INTRODUCTION

Departing from the principles of traditional Javanese society, namely "*Sak dumuk bathuk sak nyari bumi den toh pati*”, which means that no matter how wide it is, even if it is only an inch, it will definitely be fought for until the end of life. This cannot be separated from the foundations built by society in relation to the relationship between humans and land socially, culturally and spiritually (Kuswanto, 2021). For the majority of Indonesian people, especially those who still adhere to the principles of their ancestors, land is more than a place to live. Land is part of life, the place where life begins and ends. In fact, some groups (community groups) have made certain areas (land) sacred as places that are considered holy.

This basic paradigm was then accommodated in the formation of the Indonesian State and was reflected normatively in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia. Specifically, in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that "earth and water and the natural wealth contained therein is controlled by the state and used for the greatest prosperity of the people." The presence of the state is based on the right to control, not to

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own (*property*), but to set (*lines*) the relationship between humans and the earth, water and other natural resources. Based on Bagir Manan's opinion (Manan, 2004), that the right to control the state must be seen as an anthesis of the principle*domain* which gives authority to the state to carry out ownership actions that are contrary to the principle of ownership. Strictly speaking, all forms of natural resources (including land) must not be controlled by individuals, legal entities or certain groups of people. In this case, the state acts as an organization of sovereign power for all the people.

On that basis, Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) was promulgated. It is also emphasized that national agrarian law must provide the possibility to achieve the functions of earth, water, and space by the interests, as well as meeting the needs and requirements of the Indonesian people. Also considering that based on Article 1 paragraph (3) of the UUPA, it states that the relationship between the Indonesian nation and the earth, water and space is an eternal relationship. Therefore, in the UUPA regulations, various types of land rights are also classified, which are the basis for the ownership, use and/or use of land by individuals or legal entities. There are several rights to land as referred to in Article 16 of the UUPA, including property rights, business use rights, building use rights, use rights, rental rights, land clearing rights, the right to collect forest products and other rights stipulated by law. invite.

In particular, in relation to building use rights (hereinafter referred to as HGB), Article 35 of the UUPA emphasizes the right to construct and own buildings on land that is not one's own. Based on Budi Harsono's opinion (Harsono, 2008), it can be understood that in essence the existence of HGB is a form of land use, whether state-owned land (management rights) or land owned by individuals/legal entities in order to provide economic and social benefits. Therefore, there is a time limit set for HGB, as stated in Article 35 of the UUPA, the term of HGB is 30 years and can be extended for a maximum of 20 years.

However, along with the development of society socially, economically and legally, there have been changes in the regulation of HGB, especially if it is intended for apartment buildings. In 2007, based on Law Number 25 of 2007 concerning Capital Investment (hereinafter referred to as Law No. 25 of 2007), the regulations regarding HGB, especially regarding the term, underwent changes, namely by increasing the term to a total of 80 years. The scheme is in accordance with Article 22 paragraph (1) letter b of Law no. 25 of 2007, namely "Building use rights can be granted for 80 (eighty) years by being granted and extended in advance for 50 (fifty) years and can be renewed for 30 (thirty) years." Regulations of Law no. 25 of 2007 was then subjected to a material review at the Constitutional Court, and in its decision the Court granted part of it, including the provisions of Article 22 of Law no. 25 of 2007 which was declared unconstitutional. The basic considerations are the use of the phrase "in advance at once" and the period that is too long in granting and extending HGB. The Court considered that ideally the extension process should not be given in advance all at once, but that there needs to be an evaluation mechanism carried out before the expiration of the validity period.[1]

Interestingly, after many years of the Constitutional Court's decision in *force*, and again following the provisions of UUPA, it turns out Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as Law No. 11 of 2020). Setting the HGB period in Law no. 11 of 2020, especially regarding state land or management rights, apparently has nuances in the material content of Law no. 25 of 2007. Although Law no. 11 of 2020 has been declared conditionally unconstitutional through Constitutional Court Decision Number 91/PUU-XVIII/2020, but is in the process of

updating it until the enactment of Law Number 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation. The Law (hereinafter referred to as Law No. 6 of 2023), however, has the same regulatory nuances as Law no. 25 of 2007. This can be seen in the provisions of Article 145 paragraph (2) of Law no. 6 of 2023, namely "The granting of building use rights for flats as referred to in paragraph (1) letter a can be granted at the same time with an extension of the rights after obtaining a certificate of functional fitness." There is the use of the phrase "Can be granted simultaneously with an extension of rights", which clause is not much different in meaning from Law no. 25 of 2007 which has been declared unconstitutional by the Constitutional Court. However, on the other hand, we still have to pay attention to the politics of national agrarian law which is reflected in the UUPA and its status is still valid.

On this basis, it is important to carry out a comprehensive study regarding the arrangements for granting extensions to the HGB period, especially those attached to state land. Including the need to provide an analysis with legal certainty in terms of the HGB period. Not only for sustainable investment, but also towards an arrangement that is consistent with the 1945 Constitution of the Republic of Indonesia. So that state land can provide benefits in a more equitable manner.

There are two problem formulations raised. First, what are the arrangements for granting an extension of the period of building use rights for flats that are currently in force? Second, what will be the future regulations regarding granting an extension of the term of building use rights for flats that will provide more legal certainty?

II. RESEARCH METHODS

This research is normative legal research. (Marzuki, 2008) Conducting a study using a statutory regulation approach (*statute approach*) and conceptual approaches (*conceptual approach*). The basis for consideration of this election is because the issues raised lead to normative problems, namely in the form of lack of clarity in the regulations for granting HGB extensions, especially in Law no. 6 of 2023. Then a comprehensive analysis needs to be carried out supported by legal interpretation methods (Efendi & Ibrahim, 2018).

III. RESULTS AND DISCUSSION

Existing Arrangements Regarding Granting Extension of HGB Term for Flats

Land (earth) is part of the resources that control the lives of many people. This has been constitutionally legitimized in Article 33 of the 1945 Constitution of the Republic of Indonesia. Economic, social and spiritual/cultural values are attached to land. These values are integrated and go hand in hand. This value is also reflected in the UUPA as a form of legal reform in the agrarian sector. Spiritual/cultural values are depicted, for example in the preamble section, Article 1 paragraph (3), and Article 3 UUPA. Social values are depicted, for example, in Article 6 of the UUPA. Economic values are described, for example, in Article 13, Article 14, Article 28 and Article 35 of the UUPA. That's what happened then, according to Prof. I Nyoman Nurjaya (Nurjaya, 2008) observes that the UUPA does not only contain fundamental changes in national agrarian arrangements from the colonial era. In fact, UUPA also regulates land use plans (*land-use planning*) and land redistribution through land tenure and ownership reform (*land reform*).

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The purpose of these regulatory efforts is so that the earth, water and natural resources contained therein are truly able to bring maximum benefits and results to all the Indonesian people.

The existence of HGB which is attached to ownership of land (state land), is actually also part of the economic value. However, it is not necessarily only oriented towards economic interests alone. This is also based on Moh's opinion. Hatta (Pane, 2015), who states that the Indonesian economy is a mixture of collectivism and individualism. Above the people's economy, which is still largely based on mutual cooperation, the capitalist economy grows at all levels of development. The emphasis on social value in granting HGB lies in setting the term. This can be seen in full in Article 35 UUPA:

1. Building usufruct is the right to erect and have buildings on land that is not owned by the owner, with a maximum period of 30 years.
2. At the request of the right holder and taking into account the needs and condition of the buildings, the period referred to in paragraph (1) can be extended for a maximum period of 20 years.
3. The right to use the building can be transferred and transferred to other parties.

This also cannot be separated from the basic concept of HGB as a primary land right. (Muchsin & Koeswahyono, 2008) HGB is also part of a form/understanding of use rights. (Harsono, 2008) The existence of HGB, primarily Nowadays, it has a very crucial role. Especially considering that land is increasingly limited and its value is increasing, this makes it possible for HGB to become an alternative in terms of using land for certain purposes. One of the uses for HGB with both economic and social value is for flats. As a follow-up to this, in 1996 Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Rights (hereinafter referred to as PP No. 40 of 1996) was promulgated. One of the fundamental aspects that is of serious concern is regarding legal certainty in setting the term of HGB, especially for HGB attached to state land/management rights. (Saputra, Nurwati, & Iswanto, 2016)

Historically, regulations regarding the time period and granting of HGB extensions are contained in PP No. 40 of 1996, confirmed in Article 25 paragraph (1), namely "Building Use Rights as intended in Article 22 are granted for a maximum period of thirty years and can be extended for a maximum period of twenty years", and paragraph (2) " "After the term of the Building Use Rights and its extension as intended in paragraph (1) ends, the former right holder can be granted a renewal of the Building Use Rights on the same land." Looking at these provisions, it can be seen that there is a consistency in the time period settings given in the HGB, between those contained in the UUPA and PP No. 40 of 1996. However, it must be acknowledged that the provisions in PP NO. 40 of 1996, also reflects the "potential" to grant a lump sum period of time in terms of extensions and renewals which is confirmed in Article 28 paragraph (1) PP No. 40 of 1996. This cannot be separated from the interests of capital investment. As for the complete article 28 paragraph (1) PP no. 40 of 1996, namely:

"For investment purposes, requests for extension and renewal of Building Use Rights as intended in Article 25 can be made at the same time by paying the income determined for that purpose when first applying for Building Use Rights."

Based on these rules, it seems necessary to remember again as stated by Moh. Hatta, if the nuances contained in land management are in accordance with the constitution, it is also closely related to aspects of capitalism. On this basis, in 2007, efforts were made to reform regulations, especially in relation to HGB through Law no. 25 of 2007.

The presence of Law no. 25 of 2007, especially those regulated in Article 22 relating to HGB, is a form of providing convenience in investment, including by foreigners. Based on the need to establish a conducive investment/capital investment climate and guarantees equal treatment to all foreign investment regardless of country of origin. This is also related to the ease of granting time periods and increasing HGB periods on state land/management rights. The hope is that again regarding the capitalization aspect, it will increase income and profits for both parties. (Ramadhan, Putri, & Putri, 2021) That is why Law no. 25 of 2007 dares to use the phrase "in advance at once" in terms of granting, extending and renewing HGB for up to 80 years, as intended in Article 22 paragraph (2) of Law no. 25 of 2007.

Even though in Law no. 25 of 2007 uses the phrase "in advance at once", but if you look closely, there is actually a form of restriction in the provision. Referring to Article 22 paragraphs (2), (3) and (4) of Law NO. 25 of 2007, which explicitly states:

> (2) Land rights as intended in paragraph (1) can be granted and extended in advance and at the same time for investment activities, with conditions including:
>
> a. investment carried out in the long term and related to changes in the structure of the Indonesian economy to make it more competitive;
> b. capital investment with a level of capital investment risk that requires long-term return of capital in accordance with the type of capital investment activity carried out;
> c. capital investment that does not require a large area;
> d. capital investment by using rights over national land; and It is.investment that does not disturb society's sense of justice and does not harm the public interest.
>
> (3) Land rights can be renewed after evaluating that the land is still being used and managed well in accordance with the circumstances, nature and purpose of granting the rights.
>
> (4) The granting and extension of land rights which are granted at once in advance and which can be renewed as intended in paragraph (1) and paragraph (2) can be stopped or canceled by the Government if the investment company abandons the land, harms the public interest, uses or utilizes it. land is not in accordance with the aims and objectives of granting land rights, and violates the provisions of laws and regulations in the land sector.

Provides cumulative requirements that must be met for HGB applicants. In fact, when a HGB has been attached, there is an evaluation process to really ensure that its use is still within the legal corridor. However, it must be admitted that even if there are conditions that regulate this, if at the beginning it is possible to make a simultaneous application, then the conditions stipulated will only become a formality. Moreover, taking into account the Constitutional Court Decision Number 21-22/PUU-V/2007, providing convenience in requesting time periods and extending them at the start, is not necessarily the main factor in accelerating investment. Also remembering that in the general explanation of Law no. 25 of 2007 emphasizes that the implementation of capital investment can only be achieved if the supporting factors that hamper the investment climate can be overcome, among others, through improving coordination between Central Government and Regional Government agencies, creating an efficient bureaucracy, legal certainty in the investment sector, empowering economic costs. high competitiveness, as well as a conducive business climate in the fields of employment and business security. This means that granting a time period that is done in advance at once cannot be assessed as an objective and fair solution. In fact, this extension

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would have the potential to reduce the independence of land rights, as was the case in colonial times.

At this point, the author considers that what determines the improvement of the investment climate is not the lump sum grant in terms of initial application and extension of the term. Also considering the historical, sociological, cultural and philosophical aspects of Indonesia as a country that was once colonized. There is a political and economic strategy that has the potential to harm society (Norrahman, Hasan, Jalaluddin, & Mariani, 2023). In fact, it has the potential to lead to manipulation which results in ongoing loss of land rights. That is what was then stated in the Constitutional Court Decision Number 21-22/PUU-V/2007 to return to the provisions of UUPA and PP No. 40 of 1996.

However, along with the development of legal dynamics and needs, especially if the emphasis is on economic value, various updates have emerged in the field of regulatory structuring. One of them is the adoption of a method*omnibus*, which is considered as a "medicine" in resolving the complexity of statutory level regulations which are considered to be out of sync with one another. Likewise the issue of HGB, which in this case is regulated in Law no. 11 of 2020. However, because at the beginning of the formation of Law no. 11 of 2020 does not pay attention to the formal preparation process as regulated in Law no. 12 of 2011, then through Constitutional Court Decision Number 91/PUU-XVIII/2020 it was declared conditionally unconstitutional and repairs must be carried out as soon as possible. In short, the emergence of Law no. 6 of 2023 which is not substantially different from Law no. 11 of 2020.

In Law no. 6 of 2023, the existence of HGB time period regulations, including in terms of their use for flats, has again become a serious focus. Article 145 paragraph (2) Law no. 6 of 2023, which explicitly states "The granting of building use rights for flats as intended in paragraph (1) letter a can be granted simultaneously with an extension of the rights after obtaining a certificate of functional worthiness", it is very clear that the use of the phrase "granted at once", which is the regulatory nuances are not much different from Law no. 25 of 2007, as declared unconstitutional by the Constitutional Court Decision. This means that the existence of Article 145 paragraph (2) of Law no. 6 of 2023, does not follow what is stated in the decision. In fact, the Constitutional Court's decision is essentially a form of manifestation of the interpretation of the 1945 Constitution of the Republic of Indonesia which is the state constitution. (Fadli & Aprilianda, 2021) The existence of a certificate of functional worthiness which is used as a condition for obtaining HGB and its extension simultaneously, can actually also be seen as a mere formality.

This is also considering the existence of a Functional Worthy Certificate (hereinafter referred to as SLF), which is regulated in Law Number 28 of 2002 concerning Buildings (hereinafter referred to as Law No. 28 2002) in conjunction with Government Regulation Number 16 of 2021 concerning Regulations for the Implementation of Laws. Number 28 of 2002 concerning Buildings (hereinafter referred to as PP No. 16 of 2021) in conjunction with Regulation of the Minister of Public Works and Public Housing Number 27/PRT/M/2018 concerning Certificates of Functional Worthiness of Buildings (hereinafter referred to as PermenPUPR No. 27/PRT/M /2018). In this regulation, it is emphasized that SLF is a certificate given by the Regional Government to certify the suitability of the building's function before it can be used. Strictly speaking, the existence of these SLF requirements is intended to ensure the functioning of all or part of the building which can guarantee the fulfillment of building planning requirements,

as well as requirements for safety, health, comfort and convenience of the building in accordance with the specified function.

Issuance of SLF is the authority of the Regency/City Regional Government. The following also relates to matters that need to be completed and the validity period submitted to the Regional Government based on the technical guidelines regulated in particular in Article 67 of PermenPUPR No. 27/PRT/M/2018. As an example, one of them is specifically regulated at the Regional Government level, namely in Yogyakarta City Regional Regulation Number 2 of 2016 concerning Flats (hereinafter referred to as Regional Regulation No. 2 of 2016) in conjunction with Yogyakarta Mayor Regulation Number 46 of 2016 Guidelines for the Implementation of Yogyakarta City Regional Regulation Number 2 of 2016 concerning Flats (hereinafter referred to as Perwali No. 2 of 2016). Specifically in Article 14 Perwali no. 2 of 2016 explicitly states:

> (1) The SLF validity period is set as follows:
> a. for multi-storey apartment buildings with up to 2 (two) floors, a maximum period of 20 (twenty) years is determined and can be extended according to the results of inspection/testing of the building's functional suitability;
> b. for multi-storey apartment buildings with more than 2 (two) floors, it is determined for a period of 5 (five) years and can be extended according to the results of inspection/testing of the building's functional suitability.
> (2) SLF owners are required to carry out periodic inspections every 5 (five) years.

Based on these regulations, it can be understood that at least the SLF for flats has a certain time limit, which in this case also applies from the time the SLF is issued. If related to the conditions for obtaining HGB as well as its extension as intended in Article 145 of Law no. 6 of 2023, of course this provides legal uncertainty. The location of the uncertainty is in,**First** use of the phrase "at once" in granting the HGB period. Even though the UUPA does not regulate that. If based on principles*The latter law derogates the former law*, it must be admitted that Law no. 6 of 2023 must be prioritized. (Irfani, 2020) Moreover, the drafting paradigm is based on the aim of opening opportunities for easy investment, so that it can attract many investors. However, it is necessary to re-interpret the use of the phrase "at once" in Article 145 of Law no. 6 of 2023, the essence of which is not much different from Law no. 25 of 2007 as a rule which was firmly and finally declared unconstitutional through the Constitutional Court Decision.

This means that the legal consequences of regulating Article 145 of Law no. 6 of 2023 is contrary to the 1945 Constitution of the Republic of Indonesia. This is clear, because in the process of reviewing Law no. 25 of 2007, as also confirmed in the Court's opinion section in Constitutional Court Decision Number 21-22/PUU-V/2007, states (Kusumadara, 2013):

> The problem is when the granting of such land rights (HGU, HGB and Hak Pakai) is granted with an extension in advance at once, does it not actually eliminate or reduce the state's authority to carry out management actions (*management act*), arrangement (*act of regulation*), management (*act of management*), and surveillance (*supervisory act*)? Regarding this question, the Court is of the opinion that this can reduce, even if it does not eliminate, the principle of control by the state, in this case regarding the state's authority to carry out supervisory actions (*supervisory act*) and management (*act of management*). The reason is, although there are provisions that allow the state, in casu the Government, to stop or cancel the rights to the land in question for reasons as specified in Article 22 Paragraph (4) of the Investment Law, but because of the rights to the land in question stated that it can be extended in advance at once, as stipulated in Article 22

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Paragraph (1) and Paragraph (2), the control authority by the state to carry out supervisory actions (*supervisory act*) and management (*act of management*) becomes reduced or even hindered.

The use of the phrase "simultaneously" in Article 145 of UU No. 6 Year 2023, also has the potential to hinder the country's own role in equalizing opportunities to acquire land rights fairly. This also makes the nature of the country as a ruling organization based on the right to dominate the country (HMN), especially over land to be injured. (Kusumadara, 2013)

Second, even though there is an SLF that "appears" to be a form of restriction and control effort, in fact there are no explicit provisions stated in regulations at the level of law. Provisions of Article 145 of Law no. 6 of 2023 only provides very general provisions. Comparing with what has been regulated in Article 22 paragraphs (2), (3) and (4) of Law no. 25 of 2007 is a form of restriction and control that is stated explicitly in regulations at the level of law. Such restrictions and controls alone have been assessed by the Constitutional Court as highly impossible and trigger other problems, including those related to the legality of state actions. Of course, this will create further legal uncertainty when the position of SLF is not clearly stated in the law. Not to mention when faced with the SLF period which is only 5 (five) years for flats over 2 floors. It becomes strange when the SLF is used as a condition for extension, where the condition for extension is essentially to wait for the end of the principal period by first carrying out an evaluation. If the SLF is also a condition for determining the HGB period at the start and extension, simply put, how is it possible that the SLF given at the start can determine the suitability of an apartment building for use 30 years later? Even though the SLF arrangement allows for evaluation and extension. But the problem is in Article 145 of Law no. 6 of 2023, the time period for HGB is not clearly stated.

Based on this analysis, the author views that the current regulations regarding the HGB period are unable to provide legal certainty. This can also have a domino effect in relation to the status of apartment rights for everyone who occupies it. Not to mention, if you look closely at Government Regulation Number 13 of 2021 concerning the Implementation of Flats (hereinafter referred to as PP No. 13 of 2021), there is still no clear correlation in relation to the HGB period.

Consistency in Arrangements for Granting Extension of HGB Term for Flats to Provide Legal Certainty in the Future

The high demand for land, along with the increase in Indonesia's population, has spurred the need for regulations or policies that are able to provide legal certainty for the community in terms of land use. (Sulistio, 2020) Not solely oriented towards economic interests, but also paying attention to social values, cultural with the principle of sustainability (*sustainable*) in one generation and across generations. (Winarno, Kusumaputra, & Retnowati, 2022) Also paying attention to the opinion of Moh. Hatta, namely, don't let such vast land become a tool for individual people to oppress many people. (Hatta, 1985) Moreover, the character of Indonesian society positions itself in a magical-religious way in relation to the land. (Ma'ruf, 2010) Therefore, it is based on In Article 33 of the 1945 Constitution of the Republic of Indonesia, UUPA was formed which aims, among other things:

a. laying the foundations for the preparation of National agrarian law, which will be a tool to bring prosperity, happiness and justice to the State and the people, especially the farming people, within the framework of a just and prosperous society;
b. laying the foundations for establishing unity and simplicity in land law;

c. lay the foundations to provide legal certainty regarding land rights for the people as a whole.

On this basis, the state has the right to control land, including taking into account the provisions of laws and regulations. The right to control in the state is not in the terminology of "owning". (Magnar, Junaenah, & Taufik, 2016) The state as a power organization has a more important role in building people's welfare through authority at the highest level, including:

a. regulate and organize its allocation, use, supply and maintenance;
b. determine and regulate the rights that can be had over (part of) the earth, water and space;
c. determine and regulate legal relationships between people and legal acts concerning the earth, water and space.

The existence of flats as an alternative to meet the need for housing on increasingly limited land certainly requires special attention. Don't let this alternative solution actually turn it into a boomerang or time bomb on its way. In rural areas, the existence of flats with more than 2 levels (for example 10, 15 levels or more), does not seem to be a necessity. However, in urban areas the existence of such flats has become an inseparable part of the needs for many people in the city. However, the initial granting arrangements and at the same time extending the term attached to the HGB as the basis for the right to establish an apartment, especially for state land/management rights, do not fully provide legal certainty.

As explained in the previous sub-discussion, the regulatory dynamics that occur show an orientation that is directed towards economic (liberal) aspects alone. Historically, by observing the basis of the Constitutional Court's considerations in reviewing Law no. 25 of 2007, proves the inconsistency between setting the HGB period. This clearly has an impact on sustainability in the future. Especially since the promulgation of Law no. 6 of 2023, still provides the same regulatory nuance as Law no. 25 of 2007. In fact, the analysis presented in the previous sub-discussion shows that the form of regulation at the statutory level is increasingly unclear.

At this point, the author directs the analysis of this research to regulatory consistency, in order to create legal certainty.**First,** The basic concept regarding the regulation of granting an extension of the HGB period is based on the opinion of Jayadi Damanik in a statement submitted at the trial of reviewing Law no. 25 of 2007.

> If we link the regulation of the term of land rights through HGB with the perspective of the role of the state and human rights, then according to Jayadi "it concerns the issue of land rights, which in human rights law is known as*the right to land*. The fulfillment of this right is in the hands of the state*state obligation*. Entrepreneurs cannot replace the role of the state, c.q. Government. This is not known in human rights law. So, when there is a law that transfers*state obligation* that to*corporate social responsibility*, this becomes difficult to understand from a human rights perspective.

This means that granting a period that is too long, especially with the process and granting being carried out "all at once" for initial granting and extension, shows that there is a form of*irresponsibility* from the country c.q. government. Supposedly, based on the state's right to control land, the state still has the obligation to regulate, control and manage the land it controls in a sustainable manner. That is what is desired in Article 33 of the 1945 Constitution of the Republic of Indonesia. There is still a need for a separation between the initial application for HGB

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and its extension. Cannot be done upfront all at once. The context alone is about "extension". If it is done in advance "all at once", what is the difference from giving an immediate term, for example up to 50 years? The separation between the initial application and the extension is not intended to "complicate" the investment mechanism. However, that process is part of the evaluation. Not only for the state, but also for investors or entrepreneurs who hold HGB. Bearing in mind that in a business there is an evaluation mechanism to see the feasibility of the business and its future orientation. (Soelton & Mangkunegara, 2015) For this reason, in the extension process an application is made at least two years before the end of the main term of the HGB.

Second, in constructing regulatory consistency, it is also necessary to pay attention to the politics of national land law. In essence, the UUPA is a manifestation of the will of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia "the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". Moreover, the UUPA also clearly states the fundamental/main objectives in drafting national agrarian law. All regulations relating to land, apart from not conflicting with Article 33 of the 1945 Constitution of the Republic of Indonesia, must also be in harmony with the UUPA. (Lubis, 2019) Apart from that, also pay attention to the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: II/MPR/1993 concerning Outlines of State Policy, namely:

> The structuring of land control by the state is directed so that its use can realize social justice for all Indonesian people, while the structuring of land use is carried out in a planned manner to realize the greatest prosperity of the people. Land use arrangements need to take into account people's rights to land, the social function of land rights, maximum limits on land ownership, including various efforts to prevent concentration of land control which is detrimental to the interests of the people. Land institutions are perfected to create an integrated, harmonious, effective and efficient land management system, which includes orderly administration. Land administration development activities need to be improved and supported by better analytical tools and land information tools.

Based on the GBHN, it can be understood that the state does not prohibit or make investment difficult. But the state, in this case, is in a position to control so that the land that controls the livelihoods of many people does not fall into the wrong hands, thereby harming the interests of many people. The proof is that through UUPA alone HGB can be granted for up to 50 years, not to mention adding the possibility of renewal which can be up to 30 years, bringing the total to 80 years. However, the process of granting HGB is what needs to be controlled. Land not only has economic value, but also social, cultural and spiritual value, as is contained in the UUPA. If the arrangement actually opens up space to provide an initial term and an extension at the same time, then the state could also lose control over the land. This also violates the basic nature of the state's right to control land as intended in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Therefore, in the future, it is necessary to re-evaluate the provisions of Article 145 of Law no. 6 of 2023. It is possible that the results of the research in this paper can be used as a reference in evaluating the arrangements for granting extensions to the HGB period. In fact, it is possible that if an evaluation is not carried out as soon as possible, efforts can be made*judicial review* at the Constitutional Court. It is hoped that the Constitutional Court can provide wise, wise and fair considerations in relation to the regulation of granting HGB term extensions. Moreover,

substantially Article 145 of Law no. 6 of 2023 has similarities with Article 22 of Law no. 25 of 2007. This means that the Constitutional Court Decision Number 21-22/PUU-V/2007 as jurisprudence can be used as a precedent in cases containing similar substance. These efforts are none other than to provide legal certainty in the regulation of granting HGB term extensions in the future and benefit the community at large.

IV. CONCLUSION

Regulations regarding granting extensions to the HGB periods that are currently in force are not yet capable of providing legal certainty. On the one hand, based on Article 35 of the UUPA, it does not regulate the granting of HGB and its extension to be carried out simultaneously. However, on the other hand, based on Article 145 of Law no. 6 of 2023 actually provides the basis for the initial grant and extension to be carried out simultaneously. Even though the Constitutional Court Decision Number 21-22/PUU-V/2007 has already been decided regarding similar content regarding Law No. 25 of 2007 which regulates lump sum granting with extension of HGB.

There is a need for consistency in the arrangements for granting term extensions for HGB in the future to provide legal certainty. At this point, it is necessary to evaluate and change existing laws and regulations. It doesn't even rule out the possibility of doing so*judicial review* in the Constitutional Court by taking into account previous decisions on similar matters.

The government needs to immediately evaluate and change regulations, especially the provisions of Article 145 of Law no. 6 of 2023. It is possible that, in order to provide legal certainty efficiently, the results of the evaluation can temporarily be followed up with the issuance of a Government Regulation in Lieu of Law (Perppu), which is more consistent with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and UUPA. So that in the future it can provide regulatory direction with more legal certinty regarding the regulation of granting HGB term extensions.

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BIBLIOGRAPHY

Efendi, J., & Ibrahim, J. (2018). *Metode Penelitian Hukum Normatif dan Empiris*. Depok: Prenada Media.

Fadli, M., & Aprilianda, N. (eds). (2021). *Putusan Mahkamah Konstitusi dalam Optik Politik Hukum*. Malang: Nuswantara.

Harsono, B. (2008). *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan.

Hatta, M. (1985). *Ekonomi Indonesia di Masa Datang, dalam Membangun Sistem Ekonomi Nasional - Sistem Ekonomi dan Demokrasi Ekonomi*. Jakarta: UI Press.

Irfani, N. (2020). Asas Lex Superior, Lex Specialis, dan Lex Posterior. *Jurnal Legislasi Indonesia*, *16*(3), 305–325.

E-ISSN : 2723-2476
ISSN : 2723-1968
ACLJ, Vol.5, Issue 2, 2024

Kusumadara, A. (2013). Perkembangan Hak Negara Atas Tanah. *Jurnal Media Hukum*, *20*(3), 262–276.

Kuswanto, H. (2021). *Hukum Pertanahan Perlindungan Hukum Pemegang Hak Atas Tanah Bersertifikat*. Klaten: Lakeisha.

Lubis, M. Y. (2019). Politik Hukum Masa Depan Pertanahan Indonesia. *Recital Review*, *1*(2), 1–10.

Ma'ruf, U. (2010). Politik Hukum di Bidang Pertanahan. In *Research.Unissula.Ac.Id*. Semarang: Badan Penerbit Universitas Diponegoro.

Magnar, K., Junaenah, I., & Taufik, G. A. (2016). Tafsir MK Atas Pasal 33 UUD 1945: Studi Atas Putusan MK Mengenai Judicial Review Terhadap UU No. 7/2004, UU No. 22/2001, dan UU No. 20/2002. *Jurnal Konstitusi*, *7*(1), 111. https://doi.org/10.31078/jk717

Manan, B. (2004). *Menyongsong Fajar Otonomi Daerah*. Yogyakarta: FH UII Press.

Marzuki, P. M. (2008). *Penelitian Hukum*. Jakarta: Kencana.

Muchsin, & Koeswahyono, I. (2008). *Aspek Kebijaksanaan Hukum Penatagunaan Tanah dan Penataan Ruang*. Jakarta: Sinar Grafika.

Norrahman, R. A., Hasan, A., Jalaluddin, & Mariani. (2023). Pengaruh Politik Hukum Kolonial Belanda Terhadap Perkembangan Hukum Ekonomi Syariah. *Journal of Islamic and Law Studies*, *7*(1).

Nurjaya, I. N. (2008). *Pengelolaan Sumber Daya Alam dalam Perspektif Antropologi Hukum*. Jakarta: Prestasi Pustaka Publisher.

Pane, N. (Ed.). (2015). *Mohammad Hatta, Politik, Kebangsaan dan Ekonomi (1926-1977)*. Jakarta: Kompas.

Ramadhan, A. W., Putri, G. S., & Putri, D. H. (2021). Hak Atas Tanah Sebagai Sarana Dalam Penanaman Modal. *Jurnal Yuridis*, *8*(1), 149–165.

Saputra, R. H., Nurwati, & Iswanto, B. T. (2016). Analisis Yuridis Kepemilikan Hak Guna Bangunan Atas Ruko Di Pasar Rejoamertani Temanggung. *Varia Justicia*, *12*(1).

Soelton, M., & Mangkunegara, A. (2015). Evaluasi Strategi Bisnis Dan Perancangan Balanced Scorecard Di Pt Point Break Indonesia. *Jurnal Ilmiah Manajemen Dan Bisnis Mercu Buana*, *1*(1), 117–133.

Sulistio, M. (2020). Politik Hukum Pertanahan Di Indonesia. *Jurnal Education and Development Institut Pendidikan Tapanuli Selatan*, *8*(2), 105–111.

Winarno, R., Kusumaputra, A., & Retnowati, E. (2022). Harmonization Of Law In Rural Tourism And Social Economic Development. *International Social Sciences and Humanities*, *1*(2), 425–438. https://doi.org/10.32528/issh.v1i2.202